

# EXHIBIT 4

**In the Matter Of:**

Bungie, Inc. vs Aimjunkies.com, et al.

**BRAD LAPORTE**

*September 28, 2023*

*Job Number: 1020122*

1 UNITED STATES DISTRICT COURT  
2 WESTERN DISTRICT OF WASHINGTON  
3 AT SEATTLE

4 BUNGIE, INC.,

5 Plaintiff,

6 vs.

No. 2:21-cv-811-TSZ

7 AIMJUNKIES.COM; PHOENIX DIGITAL  
8 GROUP LLC; DAVID SCHAEFER;  
9 JORDAN GREEN; JEFFREY CONWAY;  
10 and JAMES MAY,

11 Defendants.  
12 \_\_\_\_\_/

13 VIDEOTAPED DEPOSITION OF BRAD LAPORTE  
14 (via Zoom videoconference)

15  
16 DATE: September 28, 2023

17 TIME: 7:33 a.m. - 1:52 p.m., PST

18 LOCATION OF WITNESS: Juno Beach, Florida

19 TAKEN BY Deborah Carmela Dew, FPR  
20 Notary Public, State of Florida

21  
22  
23  
24  
25 JOB NO.: 1020122

CERTIFIED COPY

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1 A P P E A R A N C E S:

2

FOR THE PLAINTIFF: (via Zoom videoconference)

3

JACOB P. DINI, ESQUIRE

4

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8 FOR THE DEFENDANTS: (via Zoom videoconference)

9

PHILIP P. MANN, ESQUIRE

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Also Present via Zoom videoconference:

14

Sean Lykken, CLVS, Videographer

15

James Barker, In-house counsel, Bungie, Inc.

David Schaefer

16

Jordan Green

Ed Kaiser, PhD

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## 1 I N D E X

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3 WITNESS

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4 BRAD LAPORTE

5 Direct Examination by Mr. Dini

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7 CERTIFICATE OF OATH

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8 ERRATA PAGES

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## 10 E X H I B I T S

11 PLAINTIFF'S

DESCRIPTION

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12 Exhibit 1 (Expert Report of Brad LaPorte)

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13 Exhibit 2 (Tool ReClass digest)

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14 Exhibit 3 (Expert Report of Scott A. Kraemer)

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15 Exhibit 4 (Memory dump of notepad.exe)

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16 Exhibit 5 (Bates 0000410 - document reviewed  
17 in preparing Brad LaPorte's expert  
opinion)

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18 Exhibit 6 (Microsoft Process Monitor)

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19 Exhibit 7 (Excel Spreadsheet)

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20 Exhibit 8 (Counterclaim Exhibit D)

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21

## 22 S T I P U L A T I O N S

23 It is hereby stipulated, by and between counsel for  
 24 the respective parties and the witness, that the reading  
 25 and signing of this deposition is hereby reserved.

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1 P R O C E E D I N G S

2 THE VIDEOGRAPHER: This is the deposition of  
3 Brad LaPorte in the matter of Bungie Inc., versus  
4 Aimjunkies.com, et al, in the U.S. District Court,  
5 Western District of Washington at Seattle. Case  
6 number is 2:21-cv-811-TSZ.

7 Today's date is September 28th, 2023, and the  
8 time is 7:33 Pacific. This deposition is taking  
9 place remotely and was noticed by Jacob Dini.

10 Video operator today is Sean Lykken of Central  
11 Court Reporting. Address is 1700 7th Avenue, Suite  
12 2100, Seattle, Washington 98101. Phone number is  
13 206-682-5896.

14 The court reporter today is Deborah Carmela Dew  
15 on behalf of Central Court Reporting. The reporter  
16 will swear in the witness, but first would the  
17 attorneys voice identify themselves and state whom  
18 they represent and any other persons appearing with  
19 them starting with the Plaintiff.

20 MR. DINI: Yeah, good morning. My name is Jacob  
21 Dini with the law firm Perkins Coie. I'm counsel for  
22 Plaintiff, Bungie Inc., and I'm joined by Bungie's  
23 In-house counsel, James Barker.

24 MR. MANN: And my name is Philip Mann. I'm with  
25 the Mann Law Group on Bainbridge Island, Washington.

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1 I represent all the Defendants in this action.

2 THE REPORTER: Mr. LaPorte, would you please

3 raise your right hand to be sworn?

4 AND THEREUPON,

5 BRAD LAPORTE

6 having been first duly sworn, testified as follows:

7 THE WITNESS: I do.

8 THE REPORTER: Thank you.

9 DIRECT EXAMINATION

10 BY MR. DINI:

11 Q. Okay. Good morning, Mr. LaPorte. As I said, my  
12 name is Jacob Dini. I'm counsel for Plaintiff in this  
13 case, which is Bungie. Thank you for agreeing to attend  
14 remotely today.

15 Have you been deposed before?

16 A. Yes, I have.

17 Q. How many times have you been deposed before?

18 A. This will be the third time in deposition.

19 Q. Okay. And when were the other two depositions?

20 A. I -- so one was earlier this year, I believe it  
21 was in March. And then the other time was last year. I  
22 don't recall the month, but I did provide the actual date,  
23 I just didn't commit them to memory.

24 Q. Okay. Have you been deposed remotely before?

25 A. Yes, I have.

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1           A.    I cert -- I certainly have provided an expert  
2   report --

3           **Q.    And deposition.**

4           A.    -- and deposition, and deposition. That is an  
5   incorrect statement.

6           **Q.    Okay.**

7           A.    I'm not sure how that got in there, so I  
8   apologize.

9           **Q.    That's okay. So I want to talk a little bit**  
10   **about this case now.**

11                   **When did you first meet any of the Defendants in**  
12   **this case?**

13           A.    It was August 14th.

14           **Q.    Of 2023?**

15           A.    Correct.

16           **Q.    Who did you meet?**

17           A.    I connected with David Schaefer.

18           **Q.    Any of the other Defendants?**

19           A.    No.

20           **Q.    Did you meet Jordan Green?**

21           A.    No.

22           **Q.    Have you met Jordan Green?**

23           A.    No.

24           **Q.    Have you met Jeffrey Conway?**

25           A.    No.



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1 Q. Have you met James May?

2 A. No.

3 Q. How did you meet Mr. Schaefer?

4 A. He reached out to me via telephone.

5 Q. When were you formally engaged to offer your --  
6 the expert opinions and your report?

7 A. I believe it was shortly after that. I don't  
8 remember the exact timeline. It's actually on my invoice  
9 I believe I submitted it.

10 Q. Okay.

11 A. But I don't know the exact date, but shortly  
12 after this.

13 Q. So sometime in August 2023?

14 A. Yeah, that same week.

15 Q. Who specifically engaged you?

16 A. David Schaefer.

17 Q. Were you engaged by James May to provide any  
18 opinions at all?

19 A. No.

20 Q. What hourly rate are you billing at in this  
21 matter?

22 A. \$600 per hour.

23 Q. Have you invoiced Mr. Schaefer for your work?

24 A. I did.

25 Q. How much have you charged to Defendants to date

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1 in this case?

2 A. I don't know the exact amount off the top of my  
3 head. Approximately \$22,000, I believe --

4 Q. Have you been paid --

5 A. -- and change.

6 Q. Have you been paid for that work yet?

7 A. I have.

8 Q. When were you paid?

9 A. Recently. A few days ago, I think last week  
10 maybe.

11 Q. Were you paid the full approximately \$22,000  
12 amount?

13 A. That's correct.

14 Q. Who paid you?

15 A. David Schaefer.

16 Q. And through what method were you paid?

17 A. Via credit card through my invoicing system.

18 Q. Okay. Did you talk to anyone at Phoenix Digital  
19 Group or Defendants about their Destiny 2 cheat software  
20 sold on Aimjunkies.com?

21 A. I only spoke to David Schaefer, and it was about  
22 opining on this case. Can you clarify your question so I  
23 can answer it properly?

24 Q. Yeah. Are you aware that Defendants have sold  
25 cheat software for Bungie's Destiny 2 video game on the

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1 software that was described, for simplicity I'll just  
2 reference the Guris report.

3 The way that that software operated would  
4 typically be something that an organization might want to  
5 block if they did care and that was on a corporate  
6 computer.

7 **Q. What does it mean "on a corporate computer"?**

8 A. If it's a corporate-owned device, something  
9 that's going to connect to a corporation's entities.

10 **Q. A corporation entities --**

11 A. Software. So if a corporation has a device,  
12 it's a company-owned device that would have oversight on  
13 that system because it's company property and it was  
14 modified in that way and they did care and it was against  
15 their acceptable use policy, then some corrective actions  
16 might take place or -- or be recommended.

17 **Q. Have you ever played Destiny 2?**

18 A. I have not.

19 **Q. Have you ever downloaded Destiny 2?**

20 A. I have not.

21 **Q. Have you ever downloaded any expansions for**  
22 **Destiny 2?**

23 A. I have not.

24 **Q. Have you ever gone through the installation**  
25 **process for installing Destiny 2?**

1 A. I have not.

2 Q. Have you ever seen what sort of permissions it  
3 asks for from a user during installation?

4 A. I have not.

5 Q. Have your ever looked at the object code for  
6 Destiny 2?

7 A. I have not.

8 Q. Have you ever looked at the source code for  
9 Destiny 2?

10 A. I have not.

11 Q. Have you ever examined the Destiny 2 process and  
12 memory of a user's computer?

13 A. I have not.

14 Q. Did you ever download Destiny 2 and analyze how  
15 it operated or worked on a user's computer?

16 A. I have not.

17 Q. Have you ever used Destiny 2 or observed Destiny  
18 2 to confirm whether it accesses files on a user's  
19 computer?

20 A. I have not.

21 Q. Have you ever analyzed Destiny 2 to determine  
22 whether it circumvents any technological protection  
23 measures when it's on a user's computer?

24 A. I have not.

25 Q. I want to turn back to Exhibit 1 here, which is

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1 a copy of your expert report.

2 Are all of your opinions that you have in this  
3 case articulated in this report?

4 A. I believe so.

5 Q. You believe so or you know so?

6 A. I know so.

7 Q. Okay. Do you have any opinions related to this  
8 case that are not expressed in this expert report?

9 A. No.

10 Q. So you would agree that this report is a  
11 complete description of your opinions?

12 A. That is correct.

13 Q. Were you asked to offer any opinions about the  
14 Destiny 2 cheat software sold by Aimjunkies.com?

15 A. I was not.

16 Q. Do you have any expert opinions about how the  
17 Defendants' Destiny 2 cheat software sold on  
18 Aimjunkies.com operates?

19 MR. MANN: Object to the form of the question.

20 THE WITNESS: I do not.

21 BY MR. DINI:

22 Q. Do you have any expert opinions about how the  
23 Defendants' Destiny 2 cheat software sold on  
24 Aimjunkies.com could operate?

25 MR. MANN: Object to the form of the question.

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1 THE WITNESS: I do not.

2 BY MR. DINI:

3 Q. Do you have any expert opinion about how the  
4 Defendants' cheat loader that was distributed on  
5 Aimjunkies.com functions?

6 MR. MANN: Object to the form of the question.

7 THE WITNESS: I do not.

8 BY MR. DINI:

9 Q. Do you have any expert opinions about how the  
10 Defendants' cheat loader that was distributed on  
11 Aimjunkies.com could function?

12 MR. MANN: Object to the form of the question;  
13 calls for speculation.

14 THE WITNESS: I do not.

15 BY MR. DINI:

16 Q. Were you asked to provide any opinions, any  
17 expert opinions regarding whether Bungie breached the  
18 Aimjunkies.com terms of service in connection with this  
19 case?

20 A. I do not.

21 Q. Were you asked to provide any opin -- expert  
22 opinions regarding whether Mr. May consented to Bungie's  
23 purported access of files on his computer?

24 A. I was not.

25 Q. Were you asked --

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1 A. I'm sorry, can you strike that? Can you repeat  
2 the question?

3 Q. Yeah. Were you asked to provide any expert  
4 opinions regarding whether Mr. May consented to Bungie's  
5 purported access of files on his computer?

6 A. No.

7 Q. Were you asked to provide any expert opinions  
8 regarding whether Bungie circumvented any of Mr. May's  
9 technological protection measures to access any files on  
10 his computer?

11 A. Can you repeat the question?

12 Q. Yeah. Were you asked to provide any expert  
13 opinions regarding whether Bungie circumvented any of Mr.  
14 May's technological protection measures to access any  
15 files on his computer?

16 A. No.

17 Q. Mr. LaPorte, would you say that your expert  
18 report in this case is accurate and that it accurately  
19 reflects your opinions in this case?

20 A. That's correct.

21 Q. Sitting here now, are there any errors in your  
22 expert report that you think -- that we need to -- excuse  
23 me.

24 Sitting here now, are there any errors that you  
25 need to fix in your expert report before we start talking

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1 about it?

2 A. Just the one that we identified.

3 Q. Okay. You would agree that it's important that  
4 your expert report is accurate, right?

5 A. Understood, yes.

6 Q. You would agree that it's important that your  
7 expert report is complete, right?

8 A. That's correct.

9 Q. You took your time making this report, right?

10 A. That's correct.

11 Q. You wrote it carefully?

12 A. I did.

13 Q. And you reviewed it carefully?

14 A. That's correct.

15 Q. Okay. I think now is a good time for a quick  
16 break, maybe five, ten minutes, come back at 10:07.

17 MR. MANN: That sounds good to me.

18 THE VIDEOGRAPHER: This will end file two in the  
19 deposition of Brad LaPorte. Off the record at 10:00  
20 o'clock.

21 (Recess taken from 10:00 a.m. to 10:10 a.m.)

22 THE VIDEOGRAPHER: This will begin file three in  
23 the deposition of Brad LaPorte. Back on the record  
24 at 10:10.

25 BY MR. DINI:



1 be more clear than that.

2 BY MR. DINI:

3 Q. So is it something like has -- can see the space  
4 where the files are, is that maybe another way to put it?

5 A. Well, the -- the system is only accessible to  
6 Mr. May, it's his property. And any kind of access to any  
7 files, any system, any information whatsoever that -- that  
8 on -- that is on that device by nature should not be  
9 accessible. So in -- it's anything regarding that.

10 Q. Would "access" mean that someone at -- someone  
11 at Bungie is opening entire directories and sort of  
12 thumbing through files on the computer or --

13 A. Correct. One would not be able to do that  
14 unless you had full access to the system.

15 Q. Did you arrive at an opinion on this issue  
16 whether Bungie appears from the evidence to have accessed  
17 certain private files on the computer of James May?

18 A. Yes, and it's stated in my report.

19 Q. What is that opinion?

20 A. Yeah. In the documents that I reviewed, it was  
21 apparent that access to Mr. May's system did -- was  
22 obtained.

23 Q. Access by who?

24 A. That attribution is -- is -- was something I was  
25 not able to discern.

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1 Q. So you weren't able to the determine whether  
2 Bungie accessed Mr. May's computer private -- private  
3 files on Mr. May's computer?

4 A. That's correct.

5 Q. So you can't say for sure whether -- whether  
6 Bungie accessed private files on Mr. May's computer.

7 A. That's correct.

8 Q. Are there -- in coming to these opinions, did  
9 you ever talk to Mr. May?

10 A. No.

11 Q. Did you ever look at Mr. May's computer that  
12 he -- was allegedly accessed?

13 A. No.

14 Q. Did you ever remotely access his computer that  
15 was allegedly accessed?

16 A. No.

17 Q. Do you know what kind of computer he was  
18 running?

19 A. He was running a Windows machine.

20 Q. Do you know what the spec -- specifications of  
21 that machine are?

22 A. That was not something I was necessarily  
23 thinking of when I was -- I don't recall.

24 Q. What sort -- do you know what sort of  
25 protections, if any, he had in place to protect access to

1     **his computer?**

2           A.     He would typically have a -- a password  
3     protected access to the system and having Windows Defender  
4     running by default at a minimum.

5           **Q.     How do you know that?**

6           A.     Because it's out-of-box configuration when  
7     setting up a new system. So he would have to disable  
8     those features, which is -- he would have to have a bona  
9     fide reason to do that, which no normal -- it wouldn't be  
10    a reasonable thing to consider that someone would do that.

11          **Q.     Do you know whether Mr. May altered those**  
12    **standard settings on his computer?**

13          A.     I do not.

14          **Q.     Do you know what files, if any, on Mr. May's**  
15    **computer were private?**

16          A.     If it was on his local disk on his system, that  
17    would be the property of Mr. May.

18          **Q.     Do you know if any of his files were stored**  
19    **differently than non-private files?**

20          A.     On his system they would -- anything that's on  
21    the physical device, he would own that property.

22          **Q.     What documents, if any, support your opinion**  
23    **that Mr. May's files were accessed by someone?**

24          A.     Exhibit C. Exhibit C is the answer.

25          **Q.     Any other documents?**

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## 1 CERTIFICATE OF OATH

2 STATE OF FLORIDA )  
3 )  
4 COUNTY OF PALM BEACH )

5 I, Deborah Carmela Dew, FPR, Court Reporter and  
6 Notary Public, State of Florida, certify that BRAD LAPORTE  
7 appeared remotely before me via Zoom videoconference,  
8 produced identification, and was duly sworn on the 28th  
9 day of September, 2023.

10 Witness my hand this 2nd day  
11 of October, 2023.

12  
13  
14  
15 

16 Deborah Carmela Dew, FPR  
17 Notary Public, State of Florida  
18 Commission No.: HH125890  
19 Expires: August 21, 2025

20 PERSONALLY KNOWN \_\_\_\_\_  
21 OR PRODUCED IDENTIFICATION XXXXX  
22 TYPE OF IDENTIFICATION PRODUCED: Driver's License  
23  
24  
25

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## 1 CERTIFICATE OF REPORTER

2 STATE OF FLORIDA )  
3 )  
4 COUNTY OF ST. LUCIE )

5 I, Deborah Carmela Dew, Florida Professional  
6 Reporter, do hereby certify that I was authorized to and  
7 did remotely stenographically report the videotaped  
8 deposition of BRAD LAPORTE; that a review of the  
9 transcript was requested; and that the foregoing  
10 transcript, pages 1 through 190 is a true record of my  
11 stenographic notes.

12 I FURTHER CERTIFY that I am not a relative,  
13 employee, or attorney, or counsel of any of the parties,  
14 nor am I a relative or employee of any of the parties'  
15 attorney or counsel or counsel connected with the action,  
16 nor am I financially interested in the action.

17 DATED this 2nd day of October, 2023.  
18  
19

20   
21

22 \_\_\_\_\_  
Deborah Carmela Dew,  
23 Florida Professional Reporter  
24  
25